SUPREME COURT OF THE UNITED STATES.

No. 256.

THE PEOPLE OF THE STATE OF NEW YORK, EX REL. THE MERCHANTS' BANK, PLAINTIFFS IN ERROR,

vs.

THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

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1 The answer of the judges of the court of appeals of the State of New York in the within writ named, doth certify, under the seal of our said court, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, and send the record whereof mention in said writ is made, with all things touching or in anywise concerning the same, as appears in a certain schedule to this writ annexed, as within it is commanded.

By the court:

COR'S TEN BROECK, *Dep. Clk.* [L. S.]

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the court of appeals of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the people of the State of New York, on the relation of the Merchants' Bank, in the city of New York, against the commissioners of taxes and assessments for the city and county of New York, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity;

3 or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Merchants' Bank, in the city of New York, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court, this twentieth day of April, in the year of our Lord one thousand eight hundred and sixty-three.

KENNETH G. WHITE,
Clerk of the Circuit Court of the U. S., Southern Dist. of N. Y.

B. W. BONNEY,
Attorney for Plaintiff in Error.

Allowed by—

S. NELSON.

4 The United States of America to the commissioners of taxes and assessments for the city and county of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the court of appeals of the State of New York, in a certain suit or proceeding, wherein the people, on the relation of the Merchants' Bank, in the city of New York, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Nelson, one of the judges of the Supreme Court of the United States, this twentieth day of April, in the year of our Lord one thousand eight hundred and sixty-four.

S. NELSON.

B. W. BONNEY,
Att'y for Pl'ff in Error.

5 On this 26th day of April, in the year of our Lord one thousand eight hundred and sixty-four, personally appeared Alfred Roe before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Jonathan W. Allen, Josiah W. Brown, and Amor J. Williamson, known to deponent to be the commissioners of taxes and assessments for the city and county of New York, and to each of them in person, in their office, in the city of New York, and at the time of such delivery exhibited to each of them the foregoing or within citation; and further makes oath that he also delivered a copy of said citation to a clerk or assistant of John E. Develin, the attorney of said commissioners, in his office, in said city of New York. All which services were made on the 21st day of April, 1864.

ALFRED ROE.

Subscribed and sworn to the 26th day of April, 1864, before me.

R. E. STILLWELL, *U. S. Com'r.*

6 STATE OF NEW YORK:

In supreme court.

To the supreme court of the State of New York:

The petition of the "Merchants' Bank, in the city of New York," respectfully shows:

That your petitioner is a corporation or association formed, existing, and transacting business in the city of New York, under and pursuant to the provisions of an act of the legislature of the State of New York, entitled "An act to authorize the banking business," passed April 18th, 1838, and the various acts supplementary thereto and amendatory thereof; that the capital stock of said corporation or association is two millions seven hundred and seventy-seven thousand five hundred and twenty-five dollars, ($2,777,525;) that its real estate consists of a lot of ground fronting on Wall street and on Pine street, in the first ward of the city of New York, on which stands the banking-house of your petitioner, in which is its principal office and place of business, said premises being known by the numbers 42 Wall street and 39 Pine street, in said city; that the sums actually paid by your petitioner for said real estate, and the buildings thereon, are one hundred and eighty-five thousand dollars, ($185, 000;) that of said capital stock,

thirty thousand two hundred and seventy-five thousand dollars ($30, 275) in amount is held by various literary or charitable institutions; that said sums of $30,275 and $185,000 deducted from the whole amount of
7 said capital leaves the balance of said capital stock two millions five hundred and sixty-two thousand two hundred and fifty dollars, ($2, 562, 250.)

That the whole capital stock of the Merchants' Bank, in the city of New York, over and above the amount of its real estate, and its stock held by literary or charitable institutions, as above stated, and the personal property of said bank, to the amount of three millions three hundred and thirty thousand dollars, ($3, 330,000,) was invested in notes and stocks, or bonds of the government of the United States, issued under and in pursuance of acts of the Congress of the United States, as follows, to wit: $2, 000, 000 in United States treasury notes or certificates; $1, 229, 000 in United States treasury notes, bearing interest at the rate of seven and three-tenths per centum per annum; and $101, 000 in United States five per cent. bonds or stock, making together the said aggregate of $3,330, 000 of such notes or certificates, stocks, and bonds, the debt of the government of the United States, of which your petitioner then was, and has ever since continued to be, true and lawful owners and holders, and which amount ($3,330,000) is more than the whole amount of the capital stock of your petitioner, and of all its personal property over and above the amount of debts then and at all times since owing by your petitioner.

Your petitioner further shows and claims that said notes, certificates, stocks, bonds, and debt of the United States, and the amount of the capital stock and personal property of your petitioner invested therein, are, under the constitution and laws of the United States, exempted from taxation, and that your petitioner is not liable to taxation on or for any part of said sum of $2,562,250.

That on or about the 28th day of April, 1863, your petitioner presented to the commissioner of taxes and assessments for the city and county of New York, a statement verified by the affidavit of its cashier, and of which a copy is hereto annexed, marked "No. 1;" that your petitioner is informed by said commissioner of taxes and assessments that they have corrected the return of your petitioner, and have assessed the personal estate of
8 your petitioner at the sum of $2,562,250, as liable to taxation, and so have determined that your petitioner shall be taxed on the amount so assessed.

That the said commissioners have thus determined that your petitioner shall be assessed on said notes, certificates, stocks, bonds, and debt of the United States, and the amount of its capital and personal property invested therein; and your petitioner claims and insists that the amount of said notes, certificates, stock, bonds, and debt of the United States should be excepted from the assessment roll of the current year, and that your petitioner should be assessed or held liable to taxation upon for no sum, valuation, or amount whatever, or for its capital stock or personal property, and should be assessed and taxed upon and for its said real estate only.

That your petitioner has presented to said commissioners its objections in writing to said assessment and taxation, and its request in writing, whereof a copy is hereto annexed, marked No. 2, and has applied to said commissioners to correct such assessment and taxation, and to strike out or omit therefrom the amount of or for personal estate inserted therein.

That said commissioners decline and refuse to correct said assessment, pursuant to such request and claim of your petitioner, but insist that your petitioner is liable to such taxation on the said amount of $2,562,250 of per-

property, and is liable and bound to pay taxes on the same; and the said commissioners, pursuant to the notice given as aforesaid, are about to return their assessment rolls, containing said assessments of your petitioner, to the board of supervisors of the county of New York, for confirmation of such assessment.

Your petitioner therefore prays that a writ of certiorari may be issued, and allowed by this court, directed to the said commissioners, requiring them to certify and return to this court all and singular their proceedings in the premises, and the documents and papers before them touching or concerning the same, and that the said decision and action of the said commissioners may be reviewed and corrected on the merits by this honorable
9 court, and that the aforesaid errors of said commissioners may be corrected according to law; and that your petitioner may have such further relief, or such other relief in the premises as it may be entitled to have.

The Merchants' Bank, in the city of New York, by—

J. D. VERMILYE, *Cashier.*

ALFRED ROE,
Attorney for Merchants' Bank.

STATE OF NEW YORK, *City and County of New York:*

Jacob D. Vermilye, being duly sworn, says that he is the cashier and an officer of the Merchants' Bank in the city of New York, the petitioner in the foregoing petition, and is as familiar and well acquainted with the matters stated in said petition as any officer of said bank; that he has read the said petition, and knows the contents thereof, and that the same is true of his knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JACOB D. VERMILYE.

Sworn this first day of July, 1863, before me.

WILLIAM J. FARNHAM,
Notary Public, city and county of New York.

No. 1.

NEW YORK, *January* 12, 1863.

Statement made and delivered to the commissioners of taxes and assessments of the the city and county of New York, for and in behalf of the Merchants' Bank in the city of New York, in pursuance of the provisions of title IV, chap. XIII, part 1, of the Revised Statutes of the State of New York, and of the acts amendatory thereof, chap. 654, Laws of 1853, and chapters 456 and 536, Laws of 1857:

10 1st. Real estate owned by the said the Merchants' Bank, in the city of New York, viz: banking-house and lot, 42 Wall street..... $160,000
Building and lot 39 Pine street, situated in the 1st ward, city of New York..... 25,000
Sum actually paid therefor..... 185,000
2d. Capital stock of the said the Merchants' Bank, in the city of New York, actually paid in and secured to be paid in..... 2,777,525

Excepting therefrom—
Amount paid for real estate, as above stated..... $185,000
Amount of the said capital stock held by the State.....

Amount of the capital stock held by charitable societies, being incorporated institutions..... $30, 275

3d. Amount of surplus profits or reserved funds, exceeding ten per cent. of the capital of this bank.....

This bank held and owned at the date above named, stocks, bonds, and other securities of the United States to the amount of $3,330,000, as per schedule annexed, and claims exemption from taxation on its capital to that amount.

4th. The banking office, or the place of transacting the financial business of the said the Merchants' Bank, is situated in the first ward of the city of New York, at No. 42 Wall street.

Dated January 12, 1863.

CITY OF NEW YORK, *ss:*

I, Jacob P. Vermilye, cashier of the Merchants' Bank, in the city of New York, being duly affirmed, do hereby certify and declare that, to the best of my knowledge and belief, the foregoing statement was in all respects
11 just and true at the date thereof, to and of which date said statement is made, as required by the tax commissioners.

JACOB D. VERMILYE.

Affirmed before me this 27th day of April, 1863.

FREDERICK BULL,
Notary Public.

CITY AND COUNTY OF NEW YORK, *ss:*

I, Jacob D. Vermilye, cashier of the Merchants' Bank in the city of New York, being duly sworn, depose and say that the said the Merchants' Bank in the city of New York, held and owned, on the 12th day of January, A. D. 1863, stocks, bonds, and other securities of the United States, to the amount of $3,330,000, the same being exempt from taxation "by or under State authority," and that the total value of all other personal estate of the said the Merchants' Bank, in the city of New York, at that date, did not exceed the amount of debts due from the said the Merchants' Bank, in the city of New York. I therefore respectfully claim, on behalf of said the Merchants' Bank, in the city of New York, and as the representative thereof, that it had no taxable personal estate over and above the amount of debts due from said the Merchants' Bank, in the city of New York, (excluding property exempt by law from taxation,) and that no tax can by law be laid on said bank, save as to its real estate.

J. D. VERMILYE.

Affirmed before me this 27th day of April, A. D. 1863.

FREDERICK BULL,
Notary Public.

12 *Schedule of United States stocks, bonds, and other securities referred to within.*

United States 5 per cent. treasury certificates.....	$2, 000, 000
United State 7 3-10 notes, due Oct. 1, 1864.....	1, 229, 000
United States 5 per cent. bonds, due January, 1874.....	101, 000
	3, 330, 000

No. 2.

In the matter of the taxation of the Merchants' Bank of the city of New York.

To Jonathan W. Allen, Amor J. Williamson, Josiah W. Brown, esqrs., commissioners of taxes and assessments for the city and county of New York:

GENTLEMEN: The Merchants' Bank, in the city of New York, is informed by you that you have corrected the return of the bank, and have assessed the personal estate of said bank at the sum of two millions five hundred and sixty-two thousand two hundred and fifty dollars, ($2,562,250,) and thereby have determined that the said Merchants' Bank, in the city of New York, is taxable and shall be taxed upon said sum of $2,562,250, and also upon one hundred and fifty-eight thousand dollars, ($158,000), for the real estate owned by said Merchants' Bank, and that the rolls will be returned to the board of supervisors on the first Monday of July next, as corrected.

On or about the twenty-eighth day of April, 1863, the Merchants' Bank, in the city of New York, presented to you a statement under oath, of
13 which a copy is hereto annexed, marked "No. 1," which statement in all things sets forth correctly and truly the matters and facts therein mentioned.

The Merchants' Bank, in the city of New York, therefore respectfully submits and represents that such assessment and proposed taxation are incorrect and illegal, except as to said real estate, because all its capital stock and all its said personal estate, over and above the amount of its debts due from the said bank, were on the 12th day of January, 1863, the day of the date of said statement, and at the time when said statement was made and returned, and at all times since the date of such statement have been, and are now, invested in and consist of the public debt of the United States, to wit, of treasury notes and stocks or bonds of the United States, all of which are by law exempt from taxation.

The Merchants' Bank in the city of New York therefore respectfully protests against such assessment and taxation on the sum of $2,562,250, as or for its personal estate, and hereby requests you to correct said assessment and tax roll, by striking therefrom the said assessment on personal estate or property of the bank, and that you will hold and decide that the Merchants' Bank, in the city of New York, is not subject or liable to taxation on any valuation, sum, or amount whatever of personal estate or property.

Dated New York city, 30th June, 1863.

The Merchants' Bank, in the city of New York, by—

J. D. VERMILYE, *Cashier.*

ALFRED ROE, *Att'y for the Merchants' Bank, in the City of New York, and of Counsel.*

14 [L. S.] The people of the State of New York to the commissioners of taxes and assessments for the city and county of New York, greeting:

Whereas we have been informed by the petition of the Merchants' Bank, in the city of New York, that certain proceedings were had before you in

regard to assessment and taxation of said petitioners for the year 1863, and that you decided to assess them on the part or portion of their capital stock (amounting to $2,562,250) invested in the notes, certificates, public stocks, bonds, or other securities or indebtedness of the United States; and we being willing, for certain reasons, to be certified of the proceedngs, decision, and action had by and before you in the matter of said assessment and taxation, do command you that all and singular the said assessment made by you for the year 1863, and all and singular the documents and papers relating thereto, and your action and decision thereon, and the statement, affidavit, and protest presented to you by said petitioners, with all things touching or concerning the said assessment, as fully and entirely as the same remain before you, you send to our supreme court, at the City Hall, in the city of New York, on the sixth day of July instant, (1863,) together with this writ, to the end that your decision and action in the matter of said assessment may be reviewed and corrected by our said court, and that we may further cause to be done thereupon what of right ought to be done.

Witness Daniel P. Ingraham, esq., presiding justice of our said court, at the City Hall, in the city of New York, the first day of July, 1863.

By the court:

H. W. GENET, *Clerk.*

ALFRED ROE, *Att'y for Relator.*

Endorsed: "Allowed 1st July, 1863.

"JOSH. SUTHERLAND.

"By the court:

"H. W. GENET, *Clerk.*"

15 To the supreme court of the State of New York:

We, the undersigned, commissioners of taxes and assessment for the city and county of New York, pursuant to a certain writ of *certiorari* delivered to us, and hereto annexed, do certify and return:

That the deputy tax commissioners did, under our direction, as by law required, assess the actual value of the capital stock of the Merchants' Bank, in the city of New York, after deducting the assessed value of its real estate and all shares of stock in other corporations actually owned by such company, which are liable to taxation upon their capital stock under the laws of this State, and amount of stock held by charitable and literary institutions, at the sum of $2,562,250; and that such assessed valuation was duly entered at detail in the books provided for that purpose and kept in the office of the said commissioners, called "The Annual Record of the Assessed Valuation of Real and Personal Estate;" that notice of such assessment was given to said bank; that thereupon the officers of said bank did appear before us, and did complain of said assessment, and did present to us certain statements in writing, of which a true copy is hereunto annexed, marked No. 1.

That thereupon we, the said commissioners, did examine into the said complaint, and in our judgment the said assessment was and is correct, and we determined that the actual value of the said capital stock, after making the aforesaid deductions, was $2,562,250, which we believed and now believe to be just; and such assessment stands in the said Annual Record of the Assessed Valuation of Real and Personal Estate as an assessment for that amount against the said bank.

We further state that our decision thereon was declared, and such reduction made, within thirty days after the said application was made to us as

aforesaid, and prior to the first day of May, A. D. 1863; that said assessment so made, and our action thereupon, were under and in pursuance of the several laws of the State of New York relating to the assessment and collection of taxes in the city and county of New York.

And we do further certify and return that the said the Merchants' Bank, in the city of New York, is, and for several years last past has been,
16 a banking corporation, created under and by the laws of the State of New York, and not otherwise; and under and in pursuance of such laws, enjoys, and has during all said time enjoyed, certain privileges, and is and has been subject to certain burdens; and among other burdens is, and was at the time of such assessment, subject to assessment and taxation upon the value of its capital stock, without regard to the fact that such capital stock, or any portion of it, might be invested in the public stocks, debts, or bonds of the United States; and that such assessment was not made upon the public stocks or bonds of the United States, but was made, pursuant to the laws of said State of New York, upon the capital stock of said bank, estimated at its just value, after making the exceptions and deductions required by the statutes of said State.

In testimony whereof, we, the said commissioners, have, respectively, to these presents subscribed our names and affixed our seals, at the city of New York, this 6th day of July, 1863.

AMOR J. WILLIAMSON. [L. S.]
J. W. ALLEN. [L. S.]
JOSH. W. BROWN. [L. S.]

17 At a special term of the supreme court, held at the City Hall, in the city of New York, on the 6th day of July, 1863.

Present: Hon. Josiah Sutherland, Hon. Thos. W. Clerke, and Hon. Geo. G. Barnard.

THE PEOPLE, *ex rel.* THE MERCHANTS' BANK, in the City of New York, *agst.* THE COMMISSIONERS OF TAXES AND ASSESSMENTS, &c.

And other similar proceedings.

On motion of John S. Develin, counsel to the commissioners of taxes and assessments, &c.:

Ordered, that hearing of the certiorari in these matters stand over to the third Monday of September, 1863, and that the return be filed *nunc pro tunc* as of this date within twenty days, reserving all rights of the relators respecting such return.

A copy. H. W. GENET, *Clerk.*

[U. S. revenue stamp.]

18 At a general term of the supreme court of the State of New York, at the city of New York, on the 30th day of November, 1863.

Present: Hon. Josiah Sutherland, P. J.; Hon. William H. Leonard and Hon. William F. Allen, justices.

THE PEOPLE, *ex rel.* THE MERCHANTS' BANK, in the City of New York, *agst.* THE COMMISSIONERS OF TAXES AND ASSESSMENTS of the City and County of New York.

This matter having been brought to a hearing at a general term of this

court, in the city of New York, on the 28th day of September, 1863, upon the petition, certiorari, and return thereto, and counsel for the relators, and for the board of commissioners of taxes and assessments of the city and county of New York, named in said petition, writ, and proceedings, having been heard, and the court having reviewed upon the merits the decision and action of said commissioners, now, on motion of John E. Develin, of counsel for said commissioners, it is ordered, adjudged, and decreed that the proceedings and determinations of the said commissioners in the assessment of the said relators be, and the same hereby are, in all respects confirmed and held valid. And it is further adjudged that the said commissioners recover from the above-named relators their costs and disbursements, to be taxed by the clerk of the court.

Therefore, it is considered and adjudged that the proceedings and determinations of the said commissioners in the assessment of the said rela-
19 tors be, and the same are hereby, in all respects confirmed and held valid, and that the commissioners of taxes and assessments for the city and county of New York recover of the Merchants' Bank in the city of New York, the sum of forty-six dollars and twenty-seven cents for their costs and disbursements by them about their proceedings in this behalf expended, and that said commissioners have execution therefor.

Judgment signed this 22d day of December, 1863.

H. W. GENET, *Clerk.*

In supreme court, State of New York.

THE PEOPLE, *ex rel.* THE MERCHNTS' BANK, in the City of New York, appellants, *agst.* THE COMMISSIONERS OF TAXES AND ASSESSMENTS, &c., respondents.

GENT.: Please take notice that the above-named relators appeal to the court of appeals of the State of New York from the order of the general term of this court in the above proceeding, made on the 30th day of November, 1863, and from the judgment entered thereon on the 22d day of December, 1863, and from each and every part of such order and judgment.

New York, Dec. 22d, 1863.

Yours, &c.,

ALFRED ROE, *Att'y for Applts.*

To JOHN E. DEVELIN, Esq.,
Attorney for Respondents.
HENRY W. GENET, Esq., *Clerk.*

20 STATE OF NEW YORK,
City and County of New York, ss:

I, Henry W. Genet, clerk of the supreme court of said State, in and for said city and county, do hereby certify that the proceedings consist of certified copies of the judgment roll, the notice of appeal, the order appealed from, and the papers on which the court below acted in making such order.

[L. S.] In witness whereof, I have hereunto subscribed my name and affixed my official seal this 23d day of December, 1863.

H. W. GENET, *Clerk.*

[U. S. stamp.]

Supreme court.

THE PEOPLE, *ex rel.* THE MERCHANTS' BANK, in the City of New York,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS for the City and County of New York.

CITY AND COUNTY OF NEW YORK, *ss:*

Alfred Roe, of said city of New York, attorney-at-law, being duly sworn, says: He is attorney for relators above named; that he has caused application to be made at the office of the clerk of the city and county of New York for the opinion of the general term of the supreme court on the decision of the above matter, and that he has been informed and believes no opinion was filed or given on such decision.

ALFRED ROE.

Sworn before me this 26th day of December, 1863.

THOS. S. RIVETT,

[U. S. stamp.] *Notary Public, City and County of New York.*

21 STATE OF NEW YORK:

At a court of appeals for the State of New York, held at the Capitol, in the city of Albany, on the twenty-second day of March, A. D. 1864.

Present: Hon. Hiram Denio, chief judge, presiding.

THE PEOPLE, OF THE STATE OF NEW YORK, on the relation of the Merchants' Bank, in the city of New York, appellants,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS for the City and County of New York, respondents.

The appeal in this cause having been argued by Mr. B. W. Bonney, of counsel for the plaintiffs, appellants, and by Mr. James T. Brady and Mr. John E. Develin, of counsel for the defendants, respondents, and due deliberation having been had thereon, it is ordered that so much of the judgment of the supreme court appealed from by the said plaintiffs, appellants, as awards costs to the defendants be, and the same is hereby, reversed; and that the said judgment be, and the same is hereby, in all other respects affirmed.

And the relators having claimed exemption under and by virtue of the second section of the act of Congress entitled "An act to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States," passed February 25th, 1862, and by virtue of the eighth section of the first article of the constitution of the United States, from the taxation mentioned in the record in this cause, on the ground that the amount of their capital stock, in that respect mentioned in such record is invested in the public debt of the United States; and the validity of the authority claimed under the statute of the State of New York entitled "An act in relation to the taxation of moneyed corporations and associations," passed April 29th, 1863, to impose the tax mentioned in the said record, being drawn in question, it is certified that the judgment of this court is against the relators, against such exemption, and in favor of the validity of such authority.

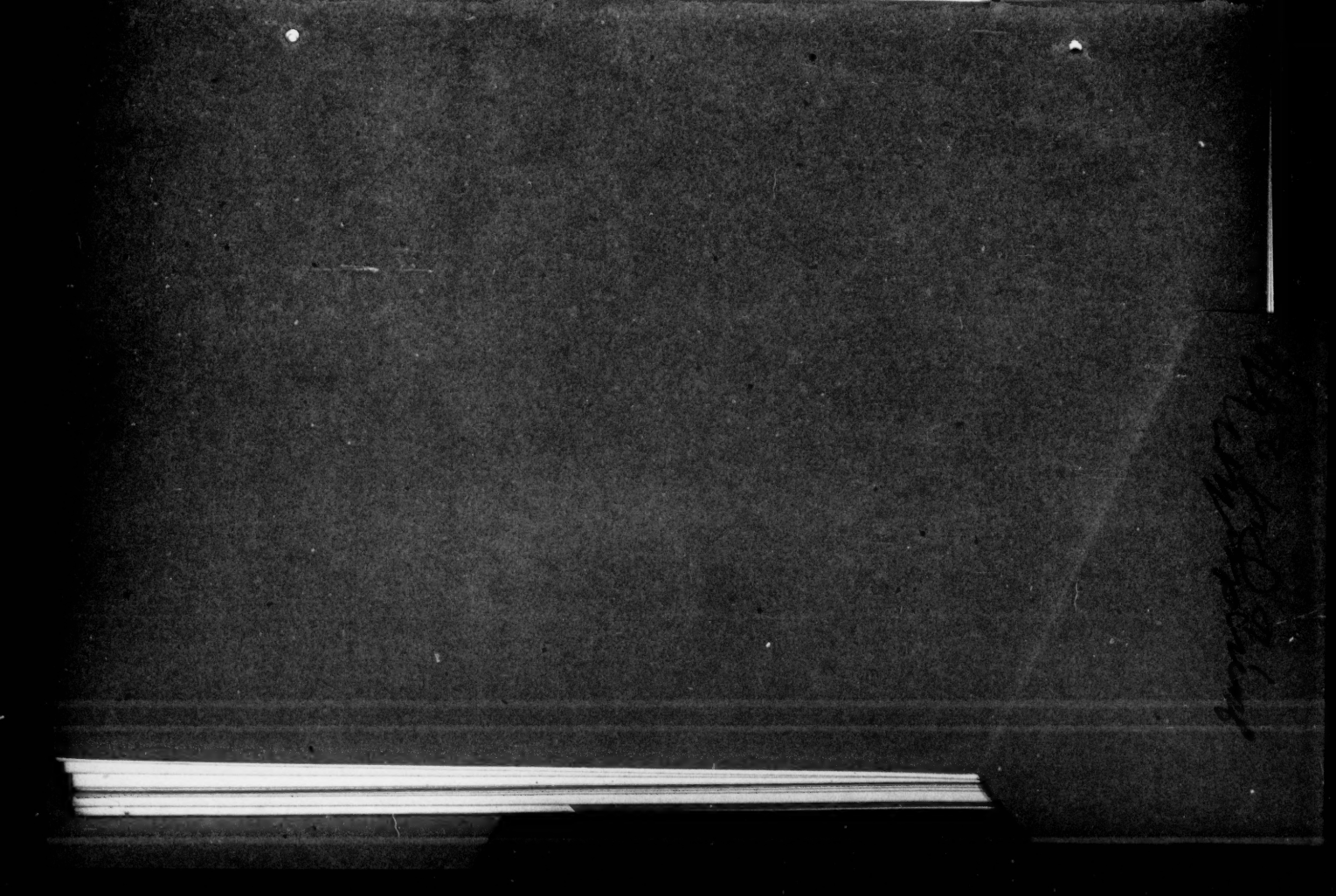
A copy.

COR'S TEN BROECK, *Dep. Clerk.*

Filed July 7, 1864.

YORK:
TERS, 41 NASSAU STREET, COR. LIBERTY.

1864.



256

1089

Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK, EX REL. THE MERCHANTS' BANK IN THE CITY OF NEW YORK,

Plaintiffs in Error,

against

THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK,

Defendants in Error.

POINTS FOR PLAINTIFFS IN ERROR.

B. W. BONNEY,
Counsel for Plaintiffs in Error.

NEW YORK:
WM. C. BRYANT & CO., PRINTERS, 41 NASSAU STREET, COR. LIBERTY.

1864.

1089

Wm. C. Bryant & Co., Printers, 41 Nassau Street, N

In the Supreme Court

OF THE UNITED STATES.

The People, &c. *ex rel.*, "The Merchants' Bank in the City of New York, Plaintiffs in Error, *against* The Commissioners of Taxes and Assessments for the City and County of New York, Defendants in Error.	Points for Plaintiffs in Error.

Case.

"*The Merchants' Bank*, in the city of New York," is a banking corporation or association, created and organized by and under the General Banking Law of New York, and doing business in the city of New York, with a capital of $2,777,525—out of which it has paid $185,000 for real estate, owned and occupied for the transaction of its business, and stock to the amount of $30,275 is held by incorporated literary and charitable institutions.

In and during the year 1863, the whole capital stock of said bank, (except said amount invested in real estate,) and other property of the bank, was invested in bonds and treasury notes, or certificates of the United States.

In April, 1863, "The Merchants' Bank," as required by the laws of New York, made and delivered to "the Commissioners of Taxes and Assessments for the city and county of New York" a statement, duly verified, showing the facts above stated; and thereupon the Bank was, by the Deputy Tax Commissioners, assessed in the sum of $2,562,250 for personal property liable to taxation.

The officers of the Bank, being notified of the assessment, thereupon appeared before the Tax Commissioners, complained of such assesment and presented a statement, in writing, of the grounds upon which the Bank claimed exemption from taxation on personal property, and claimed to have the assessment corrected. The Commissioners, after examination as required by the laws, affirmed the action of the Deputy Commissioners, and decided that the Bank was liable to taxation upon $2,562,250 of personal property.

The Bank sued out a *certiorari* for the review and correction, by the Supreme Court of New York, of said decision and action of the Commissioners, upon the merits, pursuant to the Act of the Legislature of New York, passed 11th April, 1859. (Laws of N. Y., 1859, Ch. 302, sec. 20, page 684.) The matter was heard in said Supreme Court and the action and decision of the Commissioners were affirmed. From this decision the Bank appealed to the Court of Appeals of New York, which Court, on 4th March, 1864, affirmed the judgment of the Supreme Court (except as to the matter of costs), and such judgment of the Court of Appeals of New York is brought, by writ of error, into the Supreme Court of the United States, for review.

Points for Plaintiffs in Error.

First Point.—When the assessment for taxation, now in question, was made, the whole amount of the capital stock of the Merchants' Bank (except the sum applied to the purchase of real estate, which is separately taxed,) was invested in bonds and other indebtedness of the United

States then owned and held by the Bank; and, before the passage, by the Legislature of New York, of the Act of 29 April, 1863, the Bank was not liable to taxation, by the State of New York or under authority of its laws, upon that part of its capital which was so invested.

This point has been expressly adjudged by the Supreme Court of the United States, and is not now a question for argument.

The People *ex rel.* The Bank of Commerce *v.* Tax Commissioners, 2 Black's U. S. Reports, 620.

And this decision of the U. S. Supreme Court has been recognized and followed by the Court of Appeals of New York.

The People *ex rel.* The Merchants' Bank *v.* Tax Commissioners, and several other cases, decided 31st December, 1863, by the Court of Appeals of New York, not yet reported.

Second Point.—The New York act of 29th April, 1863, is in the following words:

"Sec. 1. All banks, banking associations, and other "moneyed corporations and associations, shall be liable to "taxation on a valuation equal to the amount of their cap- "ital stock paid in, or secured to be paid in, and their sur- "plus earnings, (less ten per cent. of such surplus,) in the "manner now provided by law, deducting the value of the "real estate held by any such corporation or association, "and taxable as real estate."

"Sec. 2. This act shall take effect immediately."

N. Y. Laws of 1863, ch. 240, page 435.

This act has in no wise affected the right of corporations in New York to exemption from taxation on capital invested in the bonds or other indebtednesses of the United States,

The laws of New York in relation to taxation in force when this act was passed, provided as follows:

1 Rev. Stat. of New York, page 387, sec. 1—*Enacts*, That all lands and personal estate within the State shall be liable to taxation, subject, however, to the exemptions afterwards specified.

Page 388, sec. 3—*Defines* the terms "*personal estate*" and "*personal property*," as including goods, &c., and such portion of the capital of incorporated companies liable to taxation on their capital as shall not be invested in real estate.

Sec. 4—*Exempts* the following (and some other) property from taxation:

1. *All property, real and personal, exempted from taxation by the Constitution of New York, or under the Constitution of the United States.*

2. All lands belonging to the State of New York, or the United States.

6. All stocks owned by the State, or by literary or charitable institutions.

Sec. 7—*Exempts* the owner of stock in any incorporated company liable to taxation on its capital, from taxation as an individual for such stock.

Page 414, sec. 1—*Enacts*, That all moneyed or stock corporations deriving an income or profit from their capital or otherwise, "*shall be liable to taxation on their capital in the manner hereinafter prescribed.*"

Sec. 2—*Requires* the proper officers of every such incorporated company to make and deliver to the assessors, by a specified time in each year, a written statement specifying:

1. The real estate of such Corporation and the sums paid therefor.

2. The capital stock paid in or secured to be paid in, excepting therefrom the sums paid for real estate and the amount of stock held by the State and by any incorporated literary or charitable institutions.

3. The town or ward in which the place of business of the corporation is situated.

Page 415, sec. 6,—*Provides*, That the assessors shall enter all incorporations and their property "in their assessment rolls" in the following manner:

1. Insert in the first column of their assessment rolls the name of each Corporation, and under its name specify the amount of its capital stock, the amount paid by the corporation for its real estate, the amount of its surplus profits or reserved funds, exceeding ten per cent of its capital after deducting therefrom the amount of its real estate and the amount of its stock (if any) belonging to the State and to incorporated literary or charitable institutions.

2. Enter in the second column the quantity of real estate owned by the Corporation and its actual value.

3. Enter in the fourth column the amount of the capital of each corporation and of its surplus profits or reserved funds as aforesaid, after deducting the sums paid for its real estate and the amount of stock belonging to the State and to incorporated literary or charitable institutions.

Page 417, sec. 15,—*Requires*, The Supervisor to set down in the fifth column the amount of taxes assessed on all incorporated companies liable to taxation.

The Act of 15 April, 1857, (N. Y. Laws of 1857, Vol. 2 Chap. 456, page 2, section 3,) provides that "The capi-

"tal stock of every company liable to taxation, except such "part of it as shall have been excepted in the assessment "roll, or as shall have been exempted by law, together "with its surplus profits or reserved funds exceeding ten per "cent of its capital, after deducting the assessed value of "its real estate, and all shares of stock in other corporations "actually owned by such Company, which are taxable "upon their capital stock under the laws of this State shall "be assessed at its actual value, and taxed in the same "manner as the other personal and real estate of the "county."

The Revised Statutes of N. Y. enabled all persons, including corporations, whose property was assessed at more than its actual value over and above the amount of their debts and property exempt from taxation, to reduce the assessment.

1 R. S., page 392, Sec. 15.
" 416, " 8.

In 1851 this provision of the Revised Statutes was repealed and another provision for the same purpose enacted (N. Y. Laws, 1851, Ch. 176, p. 332, Sec. 3 and 6) which was amended in 1857, and then by express enactment made applicable to corporations.

N. Y. Laws 1857, vol. 2, ch. 536, p. 123, sec. 3 and 5.
Oswego Starch Factory, vs. Dolloway, 21 N. Y. Rep., 449, 460.

The effect and practical working of these statutes, prior to April, 1863, was as follows:

The assessors (in the city of New York Commissioners), inserted in their assessment rolls the amount of the capital stock of each corporation paid in or secured to be paid in, together with its surplus profits, or reserved funds, as shown by the statement made by the officers of such corporation —deducted therefrom such part of the stock as was excepted in the assessment roll, or was exempted by law from taxation, the value of its real estate, and the stock owned by it in other corporations liable to taxation upon

their capital—then ascertained the actual value of the balance of stock remaining after such deductions; and the assessors and supervisors assessed and taxed the corporation at and upon such actual value of said balance in the same manner as other personal property and real estate in the country were assessed and taxed; and any corporation, dissatisfied with the amount at which it was assessed, might apply to the Commissioners, pursuant to the provisions of the statutes, to have the assessment corrected; and, if the decision of the Commissioners on such application was unsatisfactory, might by *certiorari* review that decision, on the merits, in the Supreme Court, and, by appeal from that Court, in the Court of Appeals.

The act of 1863 *does not purport to take away, limit, or in any way affect* the right of corporations to exemption from taxation on such part of their capital as was invested in bonds or other indebtedness of the United States; *nor is there any intimation, by preamble or otherwise, of any intention of the Legislature to do so.*

That act contains no repealing clause, and, "*by necessary implication*," repeals only *that part* of the Act of 1857, which provides that the capital stock of a corporation, and its surplus profits, exceeding ten per cent. of its capital, "*shall be assessed at its actual value.*"

N. Y. Laws of 1857, ch. 456, vol. 2, page 1, sec. 3.

Livingston vs. Harris, 11 Wendell, 329–334.

Repeal of statutes by implication is not favored, and an earlier statute remains unaffected, unless the later is manifestly repugnant to, and inconsistent with it, or unless the later act takes some notice of the former, plainly indicating an intention to abrogate it.

Brown vs. Lease, 5 Hill, (N. Y.) Rep., 221–225, and cases referred to in note.

Williams vs. Potter, 2 Barb. S. C. R., 316–320.

Van Rensselaer vs. Snyder, 9 Barb., 302–308.

In view of all the prior statutes of New York, remaining unrepealed and in full force, and the terms of said statute of 1863, *it is clear* that the only effect of that statute is *to prescribe for the assessors a rule for fixing the value* of the capital stock of a corporation, for the purposes of taxation, different from that which had previously obtained, by assuming the amount of capital paid in or secured to be paid in, to be the value of such capital at the time of making the assessment, instead of attempting to ascertain its then actual value.

In all other respects the laws existing prior to the passage of the act of 1863 are unaffected by that act, and the assessment for taxation is to be made "*in the manner by those laws provided.*" If the Commissioners proceed in the manner thus prescribed, they must necessarily deduct and exempt from taxation all property, by 1 Rev. Stat., page 388, sec. 4, above referred to, declared to be so exempt, *including* all stocks and other indebtednesses of the United States.

Third Point.—Neither by the Revised Statutes, nor by the Act of 1863, or any other act of the Legislature, has *any capitation tax, or tax upon their franchise*, been imposed upon moneyed corporations in the State of New York.

All taxation under the laws of New York is upon *property;* and a franchise is not within the definition of that word.

1 Rev. Stat. of N. Y., Part 1, Ch. 13, Title 1, p. 387, &c.

The People *vs.* Commissioners of Taxes, 40 Barb. R., 334.

In the imposition of taxes upon moneyed corporations in New York under the Revised Statutes, and the amendments thereof, prior to the Act of 1857, as well as under the last-mentioned act, the assessment has been authorized and required by law to be made, and has always been

made *upon the property (capital) of such corporations as invested and held by them at the time of assessment, and with reference to the nature and value of the property in which the capital was invested:* and the Act of 1863 has not changed the rule of assessment in this respect.

Mutual Ins. Co. of Buffalo *vs.* Supervisors of Erie, 4 N. Y. R., (4 Comst.) 442, 445, 448.

The People *ex rel.* The Bank of the Commonwealth *v.* Commissioners of Taxes, &c., 23 N. Y. R., 192, 193, 209, 219.

1 Rev. Stat. of N. Y., p. 38, Part 1, Ch. 13, Title 1.

N. Y. Laws of 1851, Ch. 176, p. 332, Sec. 6.

" Laws of 1857, Ch. 536, 2d Vol. p. 122, Sec. 3 and 5.

Under these statutory provisions a moneyed corporation is entitled to have exempted from taxation all such personal property, held by it, as would be exempt if owned by an individual.

Fourth Point.—All stocks and indebtednesses of the United States are exempt from taxation by State authority, both by the Constitution and laws of the United States, and by the laws of New York.

Constitution of U. S., Art. 6, Sec. 2.

12 U. S. Statutes at Large, (1862,) p. 345, Sec. 2.

1 Rev. Stat. of N. Y., p. 388, Sec. 4.

The People, &c., *v.* Tax Commissioners, 2 Black U. S. Rep., 620.

The People, &c., *v.* Tax Commissioners, decided on 31st December, 1863, by Court of Appeals of New York.

The Act of 1863 will not, therefore, be construed as intended to impose a tax upon United States stocks, or in-

debtednesses, or on capital invested therein, unless its terms necessarily require such construction, and admit of no other.

Fifth Point.—If said act of 1863, by its terms, subjects to taxation, stocks, &c., of the United States held by moneyed corporations, and cannot be otherwise construed, *then it is unconstitutional and void.*

1. It is now definitively settled by adjudications of the courts of last resort of the United States, and of the State of New York, that United States stocks, &c., cannot be taxed by State authority.

   Cases cited above.

2. It is also, in like manner, settled, that moneyed corporations in New York, when taxed *upon the value of their capital stock*, are not liable to assessment for that part of their capital which is invested in United States stocks.

   Same cases.

3. The law of 1863, *if it must be construed as intended to subject to taxation all the capital of moneyed corporations without regard to the property in which it is invested*, is an evasion of the law, as previously adjudicated, in respect to so much of said capital as is invested in United States stocks, &c., and an attempt to effect by indirection that which could not be done directly.

   All taxation, of corporations as well as individuals, is *in respect of property;* and the amount of taxation is ascertained by a valuation or assessment of the amount of property subject to taxation, owned by the person (individual or corporation) liable to pay the tax.

   This principle lies at the foundation of, and pervades, all the laws of New York on the subject of taxation;

and the Statutes relative to taxation have regard both to property and to the mode of its investment, that the amount at which the property shall be valued or assessed, and the portion thereof exempt from taxation, may be ascertained.

1, Rev. Stat. of N. Y., Part 1, ch. 13, Title 1, page 386—Title 2, art. 2, p. 390—and Title 4, page 414.
N. Y. Laws of 1851, ch. 176, page 332.
" Laws of 1857, ch. 456, vol. 2, p. 1.
" Laws of 1857, ch. 536, vol. 2, p. 122.
" Laws of 1863, ch. 240, p. 435.

Sixth Point.—The Legislature of New York, by its enactments, has expressly authorized and encouraged banking associations or corporations to purchase and hold stocks of the United States.

N. Y. Laws of 1844, ch. 41, page 35.
" " 1849, " 313, " 455.
" " 1862, " 62, " 181.

Under the authority and encouragement of these laws, the Merchants' Bank, before 12th January, 1863, purchased all the United States stocks in which its capital is invested, and, at the time of making such purchases, it was not liable to taxation upon the amount of its capital so invested.

Any attempt, by subsequent legislation, to impose taxes upon the property so purchased, would certainly be a breach of good faith if not a breach of contract.

State Bank of Ohio *vs.* Knoop, 16 Howard U. S. R., 369.
Dodge *vs.* Woolsey, 18 Howard U. S. R., 331.

Seventh Point.—The judgments of the Courts of New York should be reversed, with costs to the relator; and those Courts should be directed to enter judgment vacating the assessment of the Tax Commissioners upon the Merchants' Bank in respect to its personal property, and declaring and adjudging that said bank is not liable to taxation, except upon its real estate; as the whole amount of its capital, except the sum paid for real estate, is invested in stocks, &c., of the United States, which, by law, are exempt from taxation.

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